No. _____

In The

Supreme Court of the United States

JENNIFER BARTISS-EARLEY,

Petitioner,

v.

DURKIN VILLAGE PLAINVILLE, LCC
and DEBBIEANN DURKIN,

Respondents.

On Petition For Writ Of Certiorari To The Connecticut Appellate Court

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Petitioner sued respondents in the Connecticut Superior Court claiming a parcel of land by adverse possession. Upon judgment for respondents, petitioner appealed to the Connecticut Appellate Court. Respondents moved to dismiss the appeal on a false claim that petitioner was no longer aggrieved because she had conveyed her property to a "trust." The Connecticut Appellate Court dismissed the appeal without a hearing and without explaining its reasons for the dismissal. Petitioner moved for argument and for articulation, which were denied. Petitioner also moved for reconsideration on grounds that because the grantee in the deed was not the trustee, but the trust (which cannot hold title to property), she did not lose her aggrieved status. The Appellate Court denied this motion, also without any explanation.

On petition for certification to the Connecticut Supreme Court, petitioner asserted that the Appellate Court refused to conduct any hearing on the motion to dismiss and that dismissal of the appeal was without any legal basis, both of which constituted a denial of due process in violation of the Fourteenth Amendment. The Connecticut Supreme Court denied both the petition and a motion for reconsideration. The policy question here is whether an appellate court should be allowed to dismiss an appeal without hearing and without explanation of the basis for its ruling.

Does an appellate court's dismissal of an appeal without providing a hearing, where appellant could argue against the opponent's claim, amount to a denial of appellant's statutory right to appeal and to the property right in her cause of action in violation of the due process clause of the Fourteenth Amendment?

CORPORATE DISCLOSURE

The respondent Debbieann Durkin is the principal member of the respondent Durkin Village Plainville, LLC.

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PETITION FOR WRIT OF CERTIORARI

The petitioner respectfully prays that a writ of certiorari issue to review the judgment of the Connecticut Appellate Court on June 28, 2006, where the final denial of review by the Connecticut Supreme Court was February 28, 2007, on the important issue presented here.

OPINIONS BELOW

The judgment of the Connecticut Appellate Court, for which review is sought, is unreported and is set forth in App. 1. The decisions of that court denying argument, articulation, and reconsideration appear in App. 2, App. 3, and App. 4. The decision of the Connecticut Supreme Court on petitioner's petition for certification is reported at 281 Conn. 913 (2007) and appears in App. 5. The decision of the Connecticut Supreme Court in denying reconsideration of that ruling is unreported and appears in App. 6. The trial court decision of the Connecticut Superior Court, which is not at issue here, begins at App. 7.

JURISDICTION

On February 28, 2007, the Connecticut Supreme Court denied petitioner's motion to reconsider its denial of her petition to review, on the question of due process, the Connecticut Appellate Court's dismissal of her appeal of a trial court judgment. Pursuant to Supreme Court Rule 13.1, this petition has been filed within 90 days after the entry of that decision.

The jurisdiction of the Court is invoked pursuant to 28 U.S.C. Section 1257.

CONSTITUTIONAL PROVISION AND STATUTE INVOLVED IN THIS CASE

(1) United States Constitution, Fourteenth Amendment, Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

(2) Connecticut General Statutes, Section 51-197a(a).

Appeals from final judgments or actions of the Superior Court shall be taken to the Appellate Court in accordance with section 51-197c, except for small claims, which are not appealable, appeals within the jurisdiction of the Supreme Court as provided for in section 51-199, appeals as provided for in sections 8-8 and 8-9, and except as otherwise provided by statute.

STATEMENT OF THE CASE

This case does not involve simply a misapplication of state law. It is about an appellate court's complete disregard for established law to deny petitioner her statutory right to have her appeal heard, and its refusal to conduct any hearing on the dismissal so that petitioner could fully contest the respondents' claims.

Petitioner sued respondents, claiming a certain parcel of land by adverse possession. The trial court rendered judgment for respondents on her complaint and for respondents on only one count (trespass) of their counterclaim. The rulings and findings of the trial court (App. 7) are not at issue in this petition. Petitioner duly appealed to the Connecticut Appellate Court. Before she took the appeal, she had executed and recorded a deed to "The Jennifer Bartiss-Earley Living Trust." (App. 29). The grantee in this deed was not "Jennifer Bartiss-Earley, Trustee" of the trust. Respondents moved to dismiss the appeal (App. 22) on grounds the court lacked subject matter jurisdiction because by transferring title to a "trust," she lost her interest in the property. The Appellate Court granted the motion without hearing or oral argument, refused to articulate its ruling (App. 3), and refused petitioner's motion for an oral argument (App. 2). Although that motion, under Connecticut practice, is for "reargument," there was never any hearing with an oral argument. The Appellate Court also refused to consider that under the law of trusts, a "trust" cannot hold title to real estate, only the trustee. (See App. 4).

Petitioner filed a petition for certification to the Connecticut Supreme Court, raising for the first time the federal due process question, that the Appellate Court's

summary dismissal of the appeal, without any hearing, deprived petitioner of her statutory right to appeal without due process in violation of the Fourteenth Amendment. The Connecticut Supreme Court denied review, its last ruling dated February 28, 2007. (App. 5 and App. 6).

REASONS FOR GRANTING THE WRIT

I. The Connecticut Appellate Court's dismissal of petitioner's appeal, without providing a hearing where petitioner could contest the false ground that a deed to a "trust," as opposed to a trustee, deprived her of aggrievement, denied petitioner the right to have her appeal heard, without due process in violation of the Fourteenth Amendment.

(A) If a litigant has a right to appeal under state law, due process must be afforded to the litigant in taking the appeal.

Under Connecticut law there is a right to appeal from a trial court to the Connecticut Appellate Court. Conn. Gen. Stat., Sec. 51-197a(a). If a litigant has a right to appeal under state law, due process must be afforded to the litigant in taking the appeal. As the U. S. Supreme Court said in *M.L.B. v. S.L.J.*, 519 U.S. 102, 110, 136 L.Ed.2d 473, 483 (1996), "Although the Federal Constitution guarantees no right to appellate review, . . . once a State affords that right, . . . the State may not 'bolt the door to equal justice,'" citing *Griffin v. Illinois*, 351 U.S. 12, 24, 100 L.Ed. 891 (1956).

A vested cause of action is a property interest within the protection of the Fourteenth Amendment. *Gibbes v.*

Zimmerman, 290 U.S. 326, 78 L.Ed. 342 (1933). Due process requires "that an individual be given an opportunity for a hearing *before* [she] is deprived of any significant property interest, ... " *Boddie v. Connecticut*, 401 U.S. 371, 379, 28 L.Ed.2d 113, 119 (1971). "As our decisions have emphasized time and again, the Due Process Clause grants the aggrieved party the opportunity to present [her] case and have its merits fairly judged. Thus it has become a truism that '*some* form of hearing' is required before the owner is finally deprived of a protected property interest." *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 433, 71 L.Ed.2d 265, 276 (1982) (Emphasis in original), citing *Board of Regents v. Roth*, 408 U.S. 564. 570-571 n.8, 33 L.Ed.2d 548 (1972).

In the present case, the Connecticut Appellate Court "bolted the door" to petitioner's cause of action by summarily dismissing her appeal without allowing her to argue at a hearing against the false argument presented by respondents. It is conceded that petitioner filed papers in opposition, but petitioner was deprived of any opportunity to learn what the real concerns of the court were and to perhaps satisfy those concerns.

(B) Petitioner was denied the opportunity to contest in open court respondents' argument that her trust deed effectively deprived her of title to the property.

In the~~ir~~ motion to dismiss respondents claimed that petitioner's deed to a "trust" deprived her of title to her property and therefore she lacked both aggrievement and standing to appeal. (See Motion to Dismiss, App. 22). Respondents' claim is not valid under the law of trusts. Although a trust is certainly a separate entity, it cannot hold title to or convey property. Title vests in the trustee.

Cornwall v. Todd, 38 Conn. 443, 445 (1871); *B.A. Ballou & Co. v. Citytrust*, 218 Conn. 749, 752 n.2, 591 A.2d 126 (1991); G. Bogert, Trusts (5th Ed.), Sec. 1. If only the trustee can hold title to the trust property and convey it, then only the trustee can receive title to the trust property. This is set forth in the Connecticut Standards of Title, Standard 7.1 (copy provided to Connecticut Appellate Court), which says that "An instrument will not operate as a conveyance of the legal title to an interest in land unless it designates a grantee in existence having the capacity to take and hold legal title to the land at the time of its conveyance." It gives an example of a grantee not having such capacity where "The grantee is an estate or trust, rather than the fiduciary of such estate or trust."

Respondents presented no authority that a deed with the trust as grantee conveys title to the trust or to the trustee. Petitioner was deprived of any opportunity to present her argument in front of the judges who made the decision to dismiss her appeal.

Also, inasmuch as petitioner was also appealing the trial court's finding in respondents' trespass counterclaim (See App. 17), which was against her personally and not as a property owner, she did not have an opportunity to argue in front of the judges who granted the dismissal that she was personally aggrieved by the trespass finding whether or not she had title to the property.

CONCLUSION

An appeal is not an insignificant part of the litigation process. Dismissal of an appeal without hearing and without explaining the court's rationale amounts to a denial of due process under the Fourteenth Amendment. Whatever reasons respondents had for bringing their motion to dismiss, petitioner should have had the opportunity to present her arguments in front of the judges who made the decision. What petitioner ultimately seeks in this matter is an order from the United States Supreme Court to the Connecticut Appellate Court to restore her appeal to the docket. The Court should grant this petition.

Respectfully submitted,

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APPELLATE COURT

STATE OF CONNECTICUT

AC 27631

JENNIFER BARTISS-EARLY [sic]

V.

DURKIN VILLAGE PLAINVILLE, LLC ET AL.

JUNE 28, 2006

ORDER

THE MOTION OF THE DEFENDANTS-APPELLEES, FILED MAY 15, 2006, TO DISMISS APPEAL HAVING BEEN PRESENTED TO THE COURT, IT IS HEREBY **ORDERED** GRANTED.

BY THE COURT,

/s/ Alan M. Gannuscio
ASSISTANT CLERK-APPELLATE

NOTICE SENT: JUNE 29, 2006
WILLIAM T. BARRANTE
LAW OFFICE OF ROBERT A. ZIEGLER
KRASOW, GARLICK & HADLEY, LLC
HON. JULIUS J. KREMSKI
CLERK, SUPERIOR COURT, NEW BRITAIN
CV03 0523428S
PAC

APPELLATE COURT

STATE OF CONNECTICUT

AC 27631

JENNIFER BARTISS-EARLY [sic]

V.

DURKIN VILLAGE PLAINVILLE, LLC ET AL.

September 6, 2006

ORDER

THE MOTION OF THE PLAINTIFF, FILED JULY 10, 2006, FOR REARGUMENT OR REARGUMENT EN BANC HAVING BEEN PRESENTED TO THE COURT, IT IS HEREBY **ORDERED** DENIED AS TO REARGUMENT AND REARGUMENT EN BANC.

BY THE COURT,

/s/ Alan M. Gannuscio
ALAN M. GANNUSCIO
ASSISTANT CLERK-APPELLATE

NOTICE SENT: 9/7/06
WILLIAM T. BARRANTE
LAW OFFICE OF ROBERT A. ZIEGLER
KRASOW, GARLICK & HADLEY, LLC
HON. JULIUS J. KREMSKI
CLERK, J.D. NEW BRITAIN (CV03 0523428S)

APPELLATE COURT

STATE OF CONNECTICUT

AC 27631

JENNIFER BARTIS-EARLY [sic]

V.

DURKIN VILLAGE PLAINVILLE, LLC ET AL.

September 6, 2006

ORDER

THE MOTION OF THE PLAINTIFF-APPELLANT, FILED JULY 25, 2006, FOR ARTICULATION HAVING BEEN PRESENTED TO THE COURT, IT IS HEREBY **ORDERED** THAT THE MOTION IS DISMISSED.

BY THE COURT,

/s/ Alan M. Gannuscio
ALAN M. GANNUSCIO
ASSISTANT CLERK-APPELLATE

NOTICE SENT: 9/7/06
WILLIAM T. BARRANTE
LAW OFFICE OF ROBERT A. ZIEGLER
KRASOW, GARLICK & HADLEY, LLC

APPELLATE COURT

STATE OF CONNECTICUT

AC 27631

JENNIFER BARTISS-EARLY [sic]

V.

DURKIN VILLAGE PLAINVILLE, LLC ET AL.

DECEMBER 13, 2006

ORDER

THE MOTION OF THE PLAINTIFF-APPELLANT, FILED SEPTEMBER 18, 2006, FOR RECONSIDERATION, HAVING BEEN PRESENTED TO THE COURT, IT IS HEREBY **ORDERED** THAT THE MOTION IS DISMISSED.

BY THE COURT,

/s/ Alan M. Gannuscio
ALAN M. GANNUSCIO
ASSISTANT CLERK-APPELLATE

NOTICE SENT: DECEMBER 14, 2006
WILLIAM T. BARRANTE
LAW OFFICE OF ROBERT A. ZIEGLER
KRASOW, GARLICK & HADLEY, LLC
HON. JULIUS J. KREMSKI
CLERK, SUPERIOR COURT, NEW BRITAIN
CV03 0523428S

SUPREME COURT

STATE OF CONNECTICUT

JENNIFER BARTISS-EARLEY *v.* DURKIN VILLAGE PLAINVILLE, LLC, ET AL.

The plaintiff's petition for certification for appeal from the Appellate Court (AC 27631) is denied

William T. Barrante, in support of the petition.

Leslee B. Hill, Robert A. Ziegler and *Jeffrey M. Knickerbocker,* in opposition.

Decided January 30, 2007

SUPREME COURT

STATE OF CONNECTICUT

NO. A.C. 27631

JENNIFER BARTISS-EARLY [sic]

v.

DURKIN VILLAGE PLAINVILLE, : FEBRUARY 28, 2007
LLC ET AL.

ORDER

THE MOTION OF THE PLAINTIFF, FILED FEBRUARY 9, 2007, FOR RECONSIDERATION OF PETITION FOR CERTIFICATION, HAVING BEEN PRESENTED TO THE COURT, IT IS HEREBY ORDERED **DENIED**.

BY THE COURT,

/s/ Michele T. Angers
MICHELE T. ANGERS
CHIEF CLERK

NOTICE SENT: FEBRUARY 28, 2007
WILLIAM T. BARRANTE
LAW OFFICE OF ROBERT A. ZIEGLER
KRASOW, GARLICK & HADLEY, LLC
HON. JULIUS J. KREMSKI
CLERK, NEW BRITAIN SUPERIOR COURT,
(CV03-0523428S)
REPORTER OF JUDICIAL DECISIONS

2006 WL 1074965

DOCKET NO.: HHB CV 03-0523428 S	: SUPERIOR COURT
JENNIFER BARTISS-EARLEY	: JUDICIAL DISTRICT
V.	: AT NEW BRITAIN
DURKIN VILLAGE PLAINVILLE, L.L.C., ET AL.	: MARCH 24, 2006

MEMORANDUM OF DECISION

The plaintiff brings her complaint, as amended, in several counts seeking title to certain land of the defendants by way of adverse possession, prescriptive easement and/or an implied easement, together with damages, plus punitive damages, as well as an order enjoining the defendants or their agents or employees from entering upon the disputed land.

The defendants deny the material allegations of the complaint and counterclaim, alleging libel, slander, tortious interference with a contract, and trespass, as well as seeking an injunction and to quiet title.

The factual background behind this action involves a large section of land owned by John Knaus, who sold off a 90 feet by 123 feet lot and retained the remainder. This smaller lot was eventually acquired by James and Charlene Spaar on December 3, 1986. The Spaars developed a mutually satisfying relationship with John Knaus with regard to the use of his adjoining land, in return for which they would care for the upkeep of his land. This relationship was, in effect, an agreement wherein Knaus would permit the Spaars to use adjoining portions of his land for

their personal use, such as outdoor family gatherings, parking motor vehicles, a boat, etc. In return, the Spaars would cut the grass and keep the area trim. He also permitted them to use a couple of sheds on the property which, when he eventually prepared to sell his land, he told the Spaars to remove from his land. They did so by tearing one down and moving the other onto what they assumed was their property. It was eventually determined upon Spaars' sale of their property to the plaintiff that the Spaars had not moved the shed completely off of Knaus's land.

Also, at the time of the sale of the property by the Spaars to the plaintiff, the Spaars marked out a rear boundary line that was eventually determined, at the time of a survey for the defendants, to be partially on the defendants' land.

The sales of the two properties to the parties herein took place within a short time of one another: Spaars' property to the plaintiff, about July 19, 2002, and the Knaus property to the defendants about July 20, 2002. Thereafter, the defendants, in preparation for developing their property, had it surveyed. Both parties then became aware of the boundary lines of the properties and that the plaintiff was using land of the defendants on both the southerly and easterly sides of the plaintiff's property.

Subsequently, the plaintiff brought this action based upon adverse use of the southerly and easterly adjoining areas of the defendants' land. Since the plaintiff did not have title to, nor use and possession of the land claimed herein by adverse possession, for the requisite fifteen (15) years of adverse use, she tacked on the usage by the prior

owners, James and Charlene Spaar, to arrive at the statutory time period of adverse usage.

The plaintiff claims that the combined periods of adverse use by the two owners sufficiently supports her claims in her complaint.

However, the prior owners, the Spaars, have testified that their use of the property while Knaus owned it was never adverse to his ownership interest, and that all of the uses of the Knaus property by the Spaars were with his full knowledge and specific consent. As to the issue of the shed being partly on the Knaus property, James Spaar indicates he moved the shed around 2001 from Knaus's land without knowing the exact boundary line, since he had never had it surveyed. That he never intended to encroach on the Knaus property.

Regarding the plaintiff's claims based on trespass, they are insufficient to show that there was a physical entry or intrusion by the defendants onto land on which the plaintiff claims a possessory interest. At best, her claim is that an intrusion by the defendants, or their agents, was onto land that she was claiming to have an interest in by adverse possession. Since the court has found no such adverse possession on her part, the trespass allegation fails.

Further, the starting date of the Spaars use of the Knaus property has not been specifically established. No evidence was presented as to when the Spaars began using Knaus's land, nor the extent of the use at that time.

Thus, adverse usage of Knaus's land during a fifteen (15) year statutory period has not been established by clear and convincing evidence.

The court finds that the plaintiff has failed to show that she and her predecessor title holders had used land of Knaus adverse to his interest by clear and convincing evidence.

Also, as to plaintiff's claim of a prescriptive easement and an implied easement created by the use of a section of the defendants' land for parking and storing vehicles, it was not shown to be adverse to the defendants' rights, but, rather, the usage by the prior owners of plaintiff's land was with the knowledge of and express permission of Knaus, the then owner of the premises. Thus, such an easement was not created.

As to the defendants' counterclaim, the defendants claim that the plaintiff's actions in making complaints to the town officials about the construction activities on the defendants' land and in contacting neighbors to object to the defendants' construction project was slanderous, libelous and tortious interference with contracts the defendant Debbieann Durkin had entered into in developing their land.

The court finds that the plaintiff's actions in opposing the defendants' development of its land resulted in delaying the project and increased its overall costs. These actions were all based upon her desire to have the neighborhood remain low density residential and safe and quiet for family life. That she may have been mistaken in her understanding of the location of her boundary lines and in her fears as to the adverse effect of the development on the neighborhood and choose to vigorously oppose it is not a sufficient basis for the court to limit her expression of dismay and opposition to the development. Her opposition was supported by neighbors who also contacted

town officials and police. These individual and group efforts in opposing the defendants' construction were legitimate means of expressing her and their opposition to the defendants' proposed development. These activities by the plaintiff delayed the development and increased costs of the development, but were permissible activities by members of the community expressing their views and opinions regarding the defendants' development.

The defendant also alleges that the plaintiff is, or has, trespassed on its land. The court finds that the plaintiff's shed encroaches on the land of the defendants and enjoins her from having the shed remain on the defendants' land and orders that the plaintiff remove the encroachment within 60 days.

The court further finds that the boundary lines between the two parcels of land herein involved is as set out in the parties' respective deeds.

Therefore, the issues set out in the plaintiff's complaint are found in favor of the defendants and against the plaintiff. As to the issues set out in the defendants' counterclaim, the court finds for the defendants on Count IV of the counterclaim, and for the plaintiff on the remaining counts of the counterclaim.

Judgment may enter for the defendants on all counts of the plaintiff's complaint, as well as on Count IV of the defendants' counterclaim. The remaining counts of the counterclaim are found for the plaintiff.

The defendants are entitled to statutory court costs.

/s/ Kremski
Kremski, J.T.R.

A.,C. 27631	APPELLATE COURT
JENNIFER BARTISS-EARLEY	STATE OF
VS.	CONNECTICUT
DURKIN VILLAGE PLAINVILLE, LLC, ET AL.	JANUARY 2, 2006

PLAINTIFF'S PETITION FOR CERTIFICATION TO THE CONNECTICUT SUPREME COURT

The plaintiff, pursuant to Section 84-1 et seq. of the Practice Book, respectfully petitions the Supreme Court for certification for appellate review of the Appellate Court's decision of June 28, 2006 dismissing the plaintiff's appeal, and its decisions of September 6, 2006 denying plaintiff's motions for reargument and for articulation, and its decision denying plaintiff's motion for reconsideration, sent to counsel on December 14, 2006.

I. Statement of the Questions Presented for Review

1. Did the Appellate Court properly find that the plaintiff lost her legal title to her property, and thus her standing to appeal, when she executed and recorded a deed of the property to the "Jennifer Bartiss-Earley Living Trust," an entity that cannot hold legal title to property under Connecticut law, instead of to herself as Trustee of that Trust?

2. Even if the aforesaid deed to the Trust deprived plaintiff of legal title to the property, did she maintain a personal interest in the appeal when she appealed from the trial court's adverse ruling in defendants' counterclaim count of trespass?

3. Did the Appellate Court deny plaintiff a protected property interest in both her cause of action and in her adverse possession property claim when it failed to hear argument on the matter of dismissal, failed to articulate whether it considered the trespass count in its rulings, and failed to follow Connecticut law on the inability of a Trust to hold legal title to real estate?

II. Basis for Certification

1. The Appellate Court has decided questions not heretofore determined by the Connecticut Supreme Court, to wit:

(a) whether the plaintiff in an adverse possession case who conveys title to the property to a Trust rather than to a Trustee, and who remains in possession of the property, and who is both the trustee and beneficiary under the trust, retains legal title to the property, and thus maintains standing to appeal and continues to be aggrieved by the trial court's decision;

(b) whether an adverse ruling on a defendant's trespass counterclaim gives the plaintiff standing and aggrievement to maintain an appeal irrespective of who has title to the real estate possessed by the allegedly trespassing plaintiff.

2. In dismissing plaintiff's appeal, the Appellate Court has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of the Supreme Court's supervision.

3. Whether the Appellate Court's summary dismissal of plaintiff's appeal on grounds not supported by law was a

denial of due process and thus a question of great public importance for review by the Supreme Court.

III. Summary of the Case

In July of 2002 the plaintiff purchased 74 South Washington Street, Plainville, from James and Charlene Spaar, who had possessed the property for more than 16 years. The property was bounded on the east and south by property owned by John F. Knaus, who about the same time sold it to defendant Debbieann Durkin. About a year later Mrs. Durkin conveyed her property to defendant Durkin Village Plainville, LLC. (hereafter the defendants may be referred to as "Durkin").

Before plaintiff took title, Mr. Spaar showed her where the southerly and easterly boundaries were. He had been using some of Mr. Knaus's land to the south and the east with Mr. Knaus's permission. There was a blacktop driveway running from South Washington Street easterly into the Knaus property, ending in a blacktop rectangle, where Mr. Spaar was parking vehicles. Mr. Spaar also had two sheds on the Knaus property. Because Mr. Knaus was selling his property to Mrs. Durkin, he asked Mr. Spaar to move the sheds onto his own property. Mr. Spaar got rid of one shed but moved the other shed onto what he believed was his property. At the closing there was a question of where the easterly boundary was. To settle this, Mr. Spaar saw-cut a line into the blacktop indicating where he believed the boundary was. The shed was to the west of this line.

In July 2003 Durkin claimed that the shed was still on its property and demanded that the plaintiff remove it. Plaintiff brought an adverse possession claim, on grounds

the Spaars had been in undisturbed possession of the land the Spaars claimed was theirs for more than 16 years, thus giving plaintiff title to that land under C.G.S. Section 52-575. Durkin filed a counterclaim, one count of which was that plaintiff's shed and other personal property constituted a trespass. Durkin also claimed damages. In his ruling Judge Kremski found for defendants on plaintiff's complaint and for defendants on the trespass count of the counterclaim. In the meantime, the plaintiff had executed and recorded a deed conveying both her deeded property and the disputed property to the "Jennifer Bartiss-Earley Living Trust." Defendants moved to dismiss the appeal, on grounds plaintiff no longer had legal title to the property and thus lacked both standing and aggrievement. One claim made by defendants to the Appellate Court was that plaintiff was not appealing from the adverse ruling on defendants' trespass counterclaim. The Appeal, however, shows that plaintiff was also appealing from Judge Kremski's finding on the trespass claim, in which he gave plaintiff 60 days from the date of the ruling to remove the shed and its contents from the disputed area. Because plaintiff did not do this, defendants, on October 24, 2006, filed with the trial court a Motion for Contempt (Appendix, A-5), which was directed **against the plaintiff personally.**

With respect to the questions presented for review in this Petition, the Appellate Court

(a) failed to articulate or explain whether its decision was based solely on its interpretation of the trust deed as depriving plaintiff of a legal interest in the property despite the fact that plaintiff was also appealing from the adverse trespass ruling directed at her individually;

(b) deprived plaintiff of her statutory right to appeal in dismissing the appeal by misinterpreting the effect of the defective trust deed and by apparently ignoring that the trespass count was directed at plaintiff as an individual, not as the owner of any particular piece of property.

IV. Argument

(1) The plaintiff did not lose her standing to appeal nor her aggrieved status because the trust deed on which defendants based their motion to dismiss did not effectively transfer legal title from the plaintiff.

The deed on which defendants grounded their motion to dismiss was a deed from Jennifer Bartiss-Earley to the "Jennifer Bartiss-Earley Living Trust."[1] Under Connecticut law and the law of most common-law jurisdictions, a trust, while a separate legal entity, is unable to hold title to real estate. Only the trustee may hold title. Because the grantee in this deed was not "Jennifer Bartiss-Earley, Trustee of the Jennifer Bartiss-Earley Living Trust," legal title was conveyed neither to the Trust (which cannot hold title) nor to the Trustee, who was not the grantee. See Connecticut Standards of Title (1999 Ed.), Standard 7.1 (copy provided to Appellate Court in motion for reconsideration), which says that "An instrument will not operate as a conveyance of the legal title to an interest in land unless it designates a grantee in existence having the

[1] Defendants will contend that plaintiff's deed would protect the property from a threatened damage judgment. As any estate-planning attorney would tell defendants, placing property in a living trust does not shield the trust property from creditors. Denis Clifford, Make Your Own Living Trust (7th Ed.), at 3/6.

capacity to take and hold legal title to the land at the time of the conveyance." An example of a grantee not having such capacity is where "The grantee is an estate or trust, rather than the fiduciary of such estate or trust."

Legal title to 74 South Washington Street thus remained in the plaintiff, at the time she took the appeal to the present time. There is really no question that the Appellate Court made a serious error in dismissing the appeal.

The undersigned counsel has found no Connecticut appellate decision on point, although courts in other states have ruled in accordance with the apparent Connecticut rule. See **Sharp v. Riekhof,** 747 P.2d 1044, 1046 (Utah 1987), citing **Ruxford v. Zeigler,** 88 P.1092, 1093 (Cal. 1907). Inasmuch as the Appellate Court did not render a written opinion, the Supreme Court might take this opportunity to issue a ruling on the capacity of a "trust" to hold legal title to real estate.

(2) Inasmuch as the plaintiff was also appealing from the trial court's adverse ruling in defendants' trespass counterclaim, and defendants sought to enforce it against her personally, plaintiff has not lost any personal interest in the outcome of the appeal.

In their trespass counterclaim, defendants alleged that the presence of plaintiff's shed and other personal property in the disputed area was a trespass. This claim was not based on plaintiff's ownership of 74 South Washington Street but her having **personal property** on land the defendants claimed as theirs. Plaintiff's alleged trespass would not have been any less a trespass if plaintiff had

been renting the 74 South Washington Street house from a third party. A person may commit a trespass by walking across another person's property or turning her car around in somebody else's driveway, or throwing stones at the windows of somebody else's house. The alleged trespasser's ownership of any particular piece of real estate is immaterial to the trespass claim.

Furthermore, defendants' Motion for Contempt is evidence that their trespass claim was aimed at the plaintiff **personally.** In this motion, defendants ask the court that the plaintiff be **"confined until she voluntarily submits to the court's authority and agrees to move the shed** . . . ," that the court **fine** the plaintiff until she moves the shed, and that the court award defendants **"attorney fees of $1,500 for the filing of this motion."** (Motion for Contempt, bottom page 3, Appendix A-5, emphasis added). Therefore, whatever the title of plaintiff's real estate, she had a personal interest in appealing the trespass finding.

"If there is any possibility that an appellant may or will suffer injury because of a judgment, it is clear that he is 'aggrieved' within the meaning of [section] 61-1 for the purposes of avoiding a motion to dismiss." Horton & Bartschi, Connecticut Practice Series, Rues [sic] of Appellate Procedure (2007), at 55, citing **Waterbury Trust Co. v. Porter,** 130 Conn. 494, 499, 35 A.2d 837, 839 (1944).

(3) The Appellate Court's summary dismissal of plaintiff's appeal was a denial of due process in violation of the Fourteenth Amendment to the United States Constitution.

The right to appeal is not a constitutional right. It is a statutory right. C.G.S. Section 51-197a. See Horton & Bartischi [sic], supra at 47. It is nevertheless a right. And even though it is not a constitutional right, it is a right that may not be taken away without due process. "Once created, 'the adequacy of statutory procedures for deprivation of a statutorily created property interest must be analyzed in constitutional terms,'" **Holman v. Hilton,** 712 F.2d 854, 858 (3d Cir. 1983), citing **Logan v. Zimmerman Brush Co.,** 455 U.S. 422, 432 (1982). And a vested cause of action is a property right within the protection of the due process clause of the Fourteenth Amendment. **Gibbes v. Zimmerman,** 290 U.S. 326, 78 L.Ed. 342 (1933). In **Goldberg v. Kelly,** 397 U.S. 254, 25 L.Ed.2d 287 (1970), the U.S. Supreme Court ruled that welfare benefits, which are provided by statute, cannot be denied without due process.

In the present case the plaintiff acknowledges that the Appellate Court presumably looked at the memoranda she filed with the court in opposition to defendants' motion to dismiss. But inasmuch as there were two possible bases on which plaintiff could legally claim standing and aggrievement, and the Appellate Court dismissed the appeal without saying why and without showing that it understood that (1) the trust deed was defective and did not convey legal title, (2) plaintiff still had a personal interest in defending against the trespass claim, and also (3) the fact – as set forth in her affidavit [provided to the Appellate Court], that she was both the trustee and beneficiary

of her living trust, there is no way plaintiff can tell if she was treated fairly by the Appellate Court, and she thus seeks review by the Supreme Court.

As the Connecticut Supreme Court said in **Waterbury Trust Co. v. Porter,** 130 Conn. at 499, "One who is a party to an action in a representative capacity may have a right to appeal even though [she] has no personal interest in the controversy, **if it is [her] duty to do so in order to protect the interest of those whom [she] represents.**" (Emphasis added). If the plaintiff had died, there would have been no problem in substituting her executor as plaintiff. Likewise, the plaintiff as trustee could be added as a party appellant, if the Court believes that the trustee deed was in fact effective.

The Appellate Court should not be allowed to summarily dismiss an appeal without any legal basis, at the behest of an appellee that misinterpreted the effect of the trustee deed to the court and that denied to the Court the fact that the plaintiff was also appealing from the trespass judgment. This petition should be granted.

PLAINTIFF-APPELLANT

By /s/ William T. Barrante

William T. Barrante
P.O. Box 273
Watertown, CT 06795
(860) 274-0301
Fax (860) 738-4906

CERTIFICATIONS

I hereby certify that the foregoing petition conforms to P.B. Section 84-5.

I also certify that on January 3, 2007, a copy of the foregoing was mailed to Ziegler Law Office, 58 East Main Street, Plainville, CT 06062; to Atty. Gerald Garlick, One State Street, Hartford, CT 06103, and to Hon. Julius Kremski, Superior Court, 20 Franklin Square, New Britain, CT 06051.

/s/ William T. Barrante
William T. Barrante

DOCKET NO.: A.C. 27631	STATE OF
JENNIFER BARTISS-EARLEY	CONNECTICUT
V.	APPELLATE COURT
DEBBIEANN DURKIN, ET AL	MAY 12, 2006

MOTION TO DISMISS

Pursuant to Rules of Appellate Practice § 66-8, the Appellant [sic] in the above captioned matter hereby moves this court to dismiss the appeal as it has been rendered moot. The Appellant, Jennifer Bartiss-Earley, is not aggrieved and no longer has standing in this matter as she no longer owns that land that is the subject of this appeal. Therefore, this matter should be dismissed.

I. Brief History

The Plaintiff commenced this action on September 2003. The Plaintiff claimed, *inter alia*, that she owned a portion of the Defendants' land by adverse possession. In December 2003, the Plaintiff moved the court for a temporary injunction. On January 5, 2004, the court denied that motion. On February 8, 2005, in response to the Defendants' motion for summary judgment, the Plaintiff filed a cross-motion for summary judgment. The court denied both motions for summary judgment. In the last week of January 2006 and the first week of February 2006, the court had a trial. On March 24, 2005, the court, (Kremski, J.), found that the Plaintiff could not prove that she owned a portion of the Defendants' land by adverse possession. This was the third time the court found against the Plaintiff. On April 7, 2005, the Plaintiff filed a motion to reargue. On April 18, 2006, on this fourth try, the court

again found against the Plaintiff. The court has ruled at a hearing for an injunction, summary judgment, trial, and motion for rehearing that Plaintiff is not entitled to relief that she requested.

Prior to the court's ruling on the trial, the Plaintiff transferred her interest in the property to a trust. The trust has not transferred its interest back to the Plaintiff. Thus, the Plaintiff is no longer aggrieved and no longer has standing, both essential elements to maintain this appeal. Despite the lack of the required ownership interest, the Plaintiff filed an appeal on May 4, 2006.

II. Specific Facts

In July 2002, the Plaintiff purchased the property that now abuts the Defendants' land. In September 2003, the Plaintiff commenced the within action claiming, *inter alia*, that she possessed a portion of the Defendants' property by adverse possession. This matter went to trial in January 2006. On March 7, 2006, the Plaintiff transferred her interest in the property to The Jennifer Bartiss-Earley Living Trust, and the Plaintiff has no ownership interest in the property. (Exhibit 1). The undersigned has attached a certified copy to the original motion. On March 24, 2006, the court found against the Plaintiff on her complaint. Despite having no ownership interest in the property that is the subject of this action, on May 4, 2006, the Plaintiff filed this appeal. Based on these facts, the Plaintiff does not have standing and is not aggrieved by the court's decision. Therefore, the court no longer has jurisdiction over this matter as it has become moot.

III. Legal Grounds

The Plaintiff's lack of ownership interest in the property that is the subject of this action (the "Property") has rendered this action moot. Therefore, the court must dismiss this action.

A. Standard of Review of Mootness.

The court must resolve this issue because it implicates its subject matter jurisdiction. "Mootness implicates [this] court's subject matter jurisdiction and is thus a threshold matter for us to resolve. . . . It is . . . well-settled . . . that the existence of an actual controversy is an essential requisite to appellate jurisdiction; it is not the province of appellate courts to decide moot questions, disconnected from the granting of actual relief or from the determination of which no practical relief can follow. . . . An actual controversy must exist not only at the time the appeal is taken, but also throughout the pendency of the appeal. . . . When, during the pendency of an appeal, events have occurred that preclude an appellate court from granting any practical relief through its disposition of the merits, a case has become moot." *Chimblo v. Monahan*, 265 Conn. 650, 655-56, 829 A.2d 841 (2003), citing *Segal v. Segal*, 264 Conn. 498, 505, 823 A.2d 1208 (2003).

Intervening events, specifically the Plaintiff divesting herself of any ownership interest in the property, has rendered this action moot. Connecticut courts have rejected equitable remedies on the ground of mootness where the issue before the court has been resolved or has lost its significance because of intervening circumstances. See *Waterbury Hospital v. Connecticut Health Care Associates*, 186 Conn. 247, 249-52, 440 A.2d 310 (1982) (court

dismissed as moot plaintiff's request for injunctive relief to restrain picketing during strike because strike and picketing had ended while appeal was pending); *Daley v. Gaitor*, 16 Conn.App. 379, 381, n. 2, 547 A.2d 1375 (court dismissed as moot plaintiff's request to enjoin city of Hartford from administering promotional examination to police officers following city's promotion of officers during pendency of appeal), cert. denied, 209 Conn. 824, 552 A.2d 430 (1988).

Dismissal of an appeal is appropriate when the position of one of the parties has been altered. "Connecticut courts also have dismissed cases on the ground of mootness where the court can offer no practical relief because the position of one of the parties has changed." *Connecticut Coalition Against Millstone v. Rocque*, 267 Conn. 116, 127, 836 A.2d 414 (2003), citing *Shays v. Local Grievance Committee*, 197 Conn. 566, 570-71, 499 A.2d 1158 (1985) (appeal regarding legality of sentence dismissed as moot because plaintiff completed sentence imposed while appeal was pending).

The court may consider evidence outside of the record. "The determination of whether a claim has become moot is fact sensitive, and may include the representations made by the parties at oral argument." *Chimblo v. Monahan*, *supra*, 265 Conn. at 656, 829 A.2d 841, quoting *Ayala v. Smith*, 236 Conn. 89, 94, 671 A.2d 345 (1996). Here, the motion has attached to it a certified copy of the land records showing that the Plaintiff has transferred her ownership interest, and that she no longer has an interest in this matter. The certified copy is stronger evidence than "representations made by the parties at oral argument," which the court could consider. *Chimblo v. Monahan*, *supra*, 265 Conn. at 656, 829 A.2d 841.

B. The Plaintiff is Neither Aggrieved nor has Standing.

The Plaintiff has neither aggrievement nor standing to bring this suit. The terms "aggrievement" and "standing" are separate and distinct definitions.

> The terms "aggrievement" and "standing" have been used interchangeably throughout most of Connecticut jurisprudence. We previously have stated that "[t]he question of aggrievement is essentially one of standing. . . ." *Beckish v. Manafort*, 175 Conn. 415, 419, 399 A.2d 1274 (1978). Although these two legal concepts are similar, they are not, however, identical. "Aggrievement is established if there is a possibility, as distinguished from a certainty, that some legally protected interest . . . has been adversely affected." Internal quotation marks omitted.) *Huck v. Inland Wetlands & Watercourses Agency*, 203 Conn. 525, 530, 525 A.2d 940 (1987), quoting *O'Leary v. McGuinness*, 140 Conn. 80, 83, 98 A.2d 660 (1953); see also *Cannavo Enterprises, Inc. v. Burns*, 194 Conn. 43, 47, 478 A.2d 601 (1984); *Bakelaar v. West Haven*, 193 Conn. 59, 65, 475 A.2d 283 (1984). We traditionally have applied the following two part test to determine whether aggrievement exists: (1) does the allegedly aggrieved party have a specific, personal and legal interest in the subject matter of a decision; and (2) has this interest been specially and injuriously affected by the decision. *Mystic Marinelife Aquarium, Inc. v. Gill*, 175 Conn. 483, 493, 400 A.2d 726 (1978); see, e.g., *New Haven v. Public Utilities Commission*, 165 Conn. 687, 700, 345 A.2d 563 (1974); *Nader v. Altermatt*, 166 Conn. 43, 51-53, 347 A.2d 89 (1974); *Johnson v. Zoning Board of Appeals*, 156 Conn. 622, 623,

> 238 A.2d 413 (1968); *Hughes v. Town Planning & Zoning Commission*, 156 Conn. 505, 507-508, 242 A.2d 705 (1968); *Gregorio v. Zoning Board of Appeals*, 155 Conn. 422, 425-26, 232 A.2d 330 (1967). Proof of aggrievement is, therefore, "an essential prerequisite to the court's jurisdiction of the subject matter of the appeal." *Mystic Marinelife Aquarium, Inc. v. Gill*, supra, at 493, 400 A.2d 726; see also *Hughes v. Town Planning & Zoning Commission*, supra, at 509, 242 A.2d 705.
>
> . . .
>
> Conversely, the standard for determining whether a party has standing . . . is less stringent. A party need have only a sufficient interest in the property to have standing. . . .

Gladysz v. Planning and Zoning Com'n of Town of Plainville, 256 Conn. 249, 255-57, 773 A.2d 300 (2001).

1. The Plaintiff is Not Aggrieved.

The Plaintiff's voluntary transfer of the Property out of her name has left her without aggrievement in this matter. As previously stated, the test for aggrievement asks "(1) does the allegedly aggrieved party have a specific, personal and legal interest in the subject matter of a decision; and (2) has this interest been specially and injuriously affected by the decision." *Gladysz v. Planning and Zoning Com'n of Town of Plainville*, *supra*, 256 Conn. at 256, 773 A.2d 300.

The Plaintiff does not have a specific, personal and legal interest in the subject matter of this decision. The Plaintiff has voluntarily deeded the property away, and

she no longer retains a "specific, personal and legal interest" in the Property. (Exhibit 1). A trust is a separate legal entity. "[E]ach trust is, in effect, a separate entity." *MMI Investments, L.L.C. v. Eastern Co.*, 45 Conn.Supp. 101, 121, 701 A.2d 50 (1996). Thus, by deeding this property to another entity, the Plaintiff has removed her specific, personal and legal interest. Therefore, the Plaintiff is not aggrieved.

The Plaintiff also does not meet the second part of the test. She has no interest that has been "specially and injuriously affected by the decision." She no longer owns the Property; therefore, no decision that the court makes could affect her. Thus, she does not meet either prong of aggrievement. As she is not aggrieved, the court lacks jurisdiction, and must grant this motion.

2. The Plaintiff Lacks Standing.

The Plaintiff has voluntarily transferred her ownership interested to a different entity. She is no longer has a "sufficient" interest in the property. The court should note that the Plaintiff had voluntarily removed her interest in this matter.

As she lacks any ownership interest in this property, the court should grant this motion and dismiss the appeal in its entirety.

IV. Conclusion

The appellant has voluntarily removed her ownership interest in the Property that is the subject of this dispute. As such, she is no longer aggrieved and no longer has standing to maintain this appeal. Thus, the court now

lacks subject matter jurisdiction because the case has become moot. Therefore, the court should grant this motion, and dismiss the appeal.

Defendants,

By: /s/ Jeffrey M. Knickerbocker
Robert A. Ziegler
Jeffrey M. Knickerbocker
Their Attorneys
58 East Main Street
Plainville, CT 06062
(860) 793-1506
Fax (860) 747-5219
Juris No. 412729

QUITCLAIM DEED
(Statutory Form)

I, **JENNIFER A. BARTISS-EARLEY**, of Plainville, Connecticut, for consideration paid of less than One ($1.00) Dollar grant to **THE JENNIFER BARTISS-EARLEY LIVING TRUST**, of Plainville, Connecticut,

WITH QUITCLAIM COVENANTS.

That certain parcel of real estate known as 74 South Washington Street, in the Town of Plainville, County of Harford, and State of Connecticut, as more particularly described in Schedule A attached to this deed.

Signed and sealed at Plainville, Conn., this 7th day of March, 2006.

Witnessed by:

/s/ William T. Barrante
William T. Barrante

/s/ Jennifer A. Bartiss-Earley (L.S.)
JENNIFER A. BARTISS-EARLEY

/s/ Gordon Doherty
Gordon Doherty

STATE OF CONNECTICUT)
) ss: Plainville
COUNTY OF HARTFORD)

On this 7th day of March, 2006, personally appeared Jennifer A. Bartiss-Earley, signer and sealer of the foregoing instrument, and acknowledged that she executed the same as her free act and deed, before me.

/s/ William T. Barrante
William T. Barrante
Commissioner of the
Superior Court

NO CONVEYANCE TAX COLLECTED

/s/ Danielle Clark ass't
TOWN CLERK

CERTIFIED A TRUE COPY OF RECORD	
vol. 468	pgs. 1223-1224
5/10/06	/s/ Carol A. Skultety
DATE	PLAINVILLE TOWN CLERK

SCHEDULE A

A certain piece or parcel of land, with improvements on it, situated on the easterly line of South Washington Street, Plainville, Connecticut, bounded and described as follows:

NORTHERLY – 123 feet on land now or formerly of Salvatore E. Calvo;

EASTERLY – 90 feet on other land of Jennifer A. Bartiss-Earley, claimed by Durkin Village Plainville, LLC;

SOUTHERLY – 123 feet on other land of Jennifer A. Bartiss-Earley, claimed by Durkin Village Plainville, LLC; and

WESTERLY – 90 feet by South Washington Street.

Together with a parcel of land to the east and south of the above-described parcel, bounded as follows:

NORTHERLY – 123 feet by other land of Jennifer A. Bartiss-Earley;

EASTERLY – 90 feet by other land of Jennifer A. Bartiss-Earley;

NORTHERLY AGAIN – 18 feet, more or less, by land of Shackett;

EASTERLY AGAIN – 96 feet, more or less, by land of Durkin Village Plainville, LLC, part of which line is marked by a line cut into the pavement;

SOUTHERLY – 141 feet, more or less, by land of Durkin Village Plainville, LLC; and

WESTERLY – 6.0 feet, more or less, by South Washington Street, ending at an

"L" in a hedgerow where the roots form a right angle to the east.

Grantee's Address:
74 South Washington Street
Plainville, CT 06062

RECEIVED & RECORDED
IN PLAINVILLE
LAND RECORDS
06 MAR - 8 AM 10:00
VOL. 468 PAGE 1223
/s/ Carol A. Skultety
TOWN CLERK